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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

JEFF HATCH-MILLER, Chairman  
WILLIAM A. MUNDELL  
MARC SPITZER  
MIKE GLEASON  
KRISTIN K. MAYES

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AZ Corporation Commission  
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF  
CINCINNATI BELL ANY DISTANCE, INC. FOR  
A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE RESOLD  
INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES, AND ALTERNATIVE OPERATOR  
SERVICES.

DOCKET NO. T-04228A-03-0914

DECISION NO. 67579

ORDER

Open Meeting  
February 8 and 9, 2005  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On December 22, 2003, Cincinnati Bell Any Distance, Inc. ("Applicant" or "CBAD") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold interexchange telecommunications services, except local exchange services, and for alternative operator services ("AOS") within the State of Arizona.<sup>1</sup>

2. Applicant is a switchless reseller that purchases telecommunications services from a

<sup>1</sup> CBAD is a subsidiary of Cincinnati Bell, Inc., formerly Broadwing, Inc. ("BI"). CBAD previously served as the marketing agent for Broadwing Telecommunications, Inc. ("BTI"). CBAD has 13 Arizona customers which receive resold interexchange service. The customers were specifically excluded from an earlier transaction approved by the Commission in Decision No. 66105 (July 25, 2003) which approved a sale of assets and customers by Broadwing Communications Services, Inc. ("BCSI") and BTI to CIII Communications Operations, LLC ("CIII"). BTI had been a wholly owned subsidiary of BCSI which was a wholly owned subsidiary of Broadwing Communications, Inc. ("BCI") which was in turn a wholly owned subsidiary of BI. As a result of Decision No. 66105, the Certificate awarded to BTI in Decision No. 60412 (September 26, 1997) was cancelled. Following the sale of assets to CIII, CBAD, the successor to BTI, was left with 13 customers and a decision was made to seek the Commission's approval for a Certificate to enable CBAD to continue to provide its reseller services and AOS in Arizona.

1 variety of carriers for resale to its customers.

2 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold  
3 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction  
4 of the Commission.

5 4. In Decision No. 57339 (April 5, 1991), the Commission found that AOS providers  
6 were public service corporations subject to the jurisdiction of the Commission.

7 5. In Decision No. 58421 (October 1, 1993), the Commission adopted A.A.C. R14-2-  
8 1001 through R14-2-1014 to regulate AOS providers.

9 6. CBAD, a Delaware corporation, has authority to transact business in the State of  
10 Arizona.

11 7. On February 18, 2004, CBAD filed an Affidavit of Publication indicating compliance  
12 with the Commission's notice requirements.

13 8. On December 20, 2004, the Commission's Utilities Division Staff ("Staff") filed a  
14 Staff Report which includes Staff's fair value rate base determination in this matter and recommends  
15 approval of the application subject to certain conditions.

16 9. In the Staff Report, Staff stated that CBAD provided audited financial statements from  
17 its ultimate corporate parent, Cincinnati Bell, Inc., for the twelve months ending December 31, 2003,  
18 which list assets of \$2.0 billion, equity of \$679.4 million and net income of \$1.3 billion.

19 10. According to the Staff Report, CBAD provides resold long distance service and AOS  
20 in 48 states. In the event that Applicant encounters financial difficulty, there should be minimal  
21 impact on long distance and AOS customers because of numerous competitors willing to replace any  
22 provider.

23 11. In its Staff Report, Staff stated that based on information obtained from the Applicant,  
24 it has determined that CBAD's fair value rate base ("FVRB") is zero. Staff has determined that  
25 Applicant's FVRB is too small to be useful in a fair value analysis, and is not useful in setting rates.  
26 Staff further stated that in general, rates for competitive services are not set according to rate of return  
27 regulation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and  
28 reasonable as they are comparable to several long distance carriers operating in Arizona and

1 comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff  
2 considered the FVRB information submitted by the Applicant, the FVRB information provided  
3 should not be given substantial weight in this analysis.

4 12. Staff believes that CBAD has no market power and that the reasonableness of its rates  
5 will be evaluated in a market with numerous competitors. In light of the competitive market in which  
6 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed  
7 tariffs for its competitive resold interexchange services will be just and reasonable, and recommends  
8 that the Commission approve them.

9 13. The Commission adopted maximum rates for AOS in Decision No. 61274 (December  
10 14, 1998), and these rates are reflected in Schedules 1 and 2 attached to the Staff Report. These  
11 maximum rates when coupled with discounting authority provide AOS providers with the ability to  
12 compete on price and service quality.

13 14. Staff recommended approval of CBAD's application for a Certificate to provide resold  
14 interexchange service and AOS subject to the following:

15 (a) The Applicant should be ordered to comply with all Commission rules, orders,  
16 and other requirements relevant to the provision of intrastate telecommunications  
17 service;

18 (b) The Applicant should be ordered to maintain its accounts and records as  
19 required by the Commission;

20 (c) The Applicant should be ordered to file with the Commission all financial and  
21 other reports that the Commission may require, and in a form and at such times as the  
22 Commission may designate;

23 (d) The Applicant should be ordered to maintain on file with the Commission all  
24 current tariffs and rates, and any service standards that the Commission may require;

25 (e) The Applicant should be ordered to comply with the Commission's rules and  
26 modify its tariffs to conform to these rules if it is determined that there is a conflict  
27 between the Applicant's tariffs and the Commission's rules;

28 (f) The Applicant should be ordered to cooperate with Commission investigations  
of customer complaints;

(g) The Applicant should be ordered to participate in and contribute to a universal  
service fund, as required by the Commission;

1 (h) The Applicant should be ordered to notify the Commission immediately upon  
2 changes to the Applicant's address or telephone number;

3 (i) The Applicant's interexchange service offerings should be classified as  
4 competitive pursuant to A.A.C. R14-2-1108;

5 (j) The Applicant's maximum rates for resold interexchange rates should be the  
6 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates  
7 for the Applicant's competitive services should be the Applicant's total service long  
run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

8 (k) In the event that the Applicant states only one rate in its proposed tariff for a  
9 competitive service, the rate stated should be the effective (actual) price to be charged  
for the service as well as the service's maximum rate;

10 (l) In the event Applicant seeks to change its rates, Applicant shall follow the  
11 procedure as set forth in A.A.C. R14-2-1110;

12 (m) The Applicant is authorized to discount its rates and service charges to the  
13 marginal cost of providing the services;

14 (n) The Applicant's interLATA rates and service charges for AOS should be based  
15 on the maximum rates and service charges as set forth in Schedule 1 attached to the  
Staff Report;

16 (o) The Applicant's intraLATA rates and service charges for AOS should be based  
17 on the maximum rates and service charges as set forth in Schedule 2 attached to the  
Staff Report;

18 (p) The Applicant's property surcharge for AOS be limited to \$1.00 per call; and

19 (q) If at some future date, the Applicant wants to collect from its resold  
20 interexchange customers an advance, deposit and/or prepayment, Staff recommends  
21 that the Applicant be required to file an application with the Commission for  
22 Commission approval. Such application must reference the Decision in this docket  
and must explain the Applicant's plans for procuring a performance bond.

23 15. Staff further recommended that CBAD's Certificate should be conditioned upon the  
24 Applicant filing conforming tariffs in accordance with this Decision within 30 days from the date of  
25 an Order in this matter.

26 16. Staff further recommended that if the Applicant fails to meet the timeframe outlined in  
27 Findings of Fact No. 15, that CBAD's Certificate should become null and void without further Order  
28 of the Commission, and that no time extensions for compliance should be granted.

- 1 17. CBAD will not collect advances, prepayments or deposits from customers.
- 2 18. The rates proposed by this filing are for competitive services.
- 3 19. Staff's recommendations as set forth herein are reasonable.
- 4 20. CBAD's fair value rate base is zero.

### 5 CONCLUSIONS OF LAW

- 6 1. Applicant is a public service corporation within the meaning of Article XV of the  
7 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.
- 8 2. The Commission has jurisdiction over Applicant and the subject matter of the  
9 application.
- 10 3. Notice of the application was given in accordance with the law.
- 11 4. Applicant's provision of resold interexchange telecommunications services and  
12 interLATA and intraLATA AOS except local exchange service in Arizona is in the public interest.
- 13 5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for  
14 providing competitive resold interexchange telecommunications services and AOS in Arizona.
- 15 6. Staff's recommendations in Findings of Fact No. 11, 12, 14, 15 and 16 should be  
16 adopted.
- 17 7. CBAD's fair value rate base is not useful in determining just and reasonable rates for  
18 the competitive services it proposes to provide to Arizona customers.
- 19 8. CBAD's rates, as they appear in its proposed tariffs, are just and reasonable and  
20 should be approved.
- 21 9. Pursuant to A.R.S. § 40-282(c)(2), a hearing is not required for the issuance of a  
22 Certificate to a reseller or an AOS provider.

### 23 ORDER

24 IT IS THEREFORE ORDERED that the application of Cincinnati Bell Any Distance, Inc. for  
25 a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange  
26 telecommunications services and AOS, except local exchange services, is hereby granted,  
27 conditioned upon its compliance with the condition recommended by Staff as set forth in Findings of  
28 Fact No. 15 above.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 11, 12, 14, 15 and 16 above are hereby adopted.

IT IS FURTHER ORDERED that Cincinnati Bell Any Distance, Inc. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 14 and 15 above.

IT IS FURTHER ORDERED that if Cincinnati Bell Any Distance, Inc. fails to meet the timeframe outlined in Findings of Fact. No. 15 above that the Certificate conditionally granted herein shall become null and void without further Order of the Commission.

IT IS FURTHER ORDERED that Cincinnati Bell Any Distance, Inc. shall not require its Arizona customers to pay advances, prepayments or deposits for any of its products or services.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

  
JEFFREY R. HATCH  
CHAIRMAN

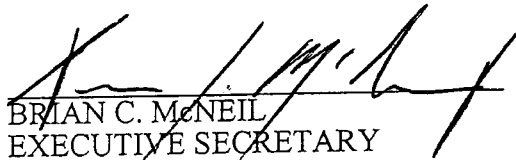
  
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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 15<sup>th</sup> day of Feb., 2005.

  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

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SERVICE LIST FOR: CINCINNATI BELL ANY DISTANCE, INC.  
DOCKET NO.: T-04228A-03-0914

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